
IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA
CIVIL SECTION: TRIAL DIVISION

GLORIA GAIL KURNS, Executrix of	:	CIVIL ACTION
the Estate of GEORGE M. CORSON,	:	
deceased, and FREIDA E. JUNG CORSON,	:	
widow in her own right	:	
	:	
vs.	:	No. 08-CV-2216
	:	
A.W. CHESTERTON, INC., et al.	:	

**MOTION TO RECONSIDER GRANT OF SUMMARY
JUDGMENT TO AMERICAN STANDARD**

1. This case involves mesothelioma.
2. It was initially filed in the Court of Common Pleas of Philadelphia.
3. The trial judge granted summary judgment to defendant American Standard.
4. Under the case law this Court has the power to grant reconsideration and reverse grant of summary judgment to American Standard.

Wherefore, This Court should grant reconsideration and reverse grant of summary judgment.

Paul, Reich & Myers, P.C.

By: /s/Robert E. Paul
Robert E. Paul 21252
Paul, Reich & Myers, P.C.
1608 Walnut Street, #500
Philadelphia, PA 19103
(215) 735-9200

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA
CIVIL SECTION: TRIAL DIVISION

GLORIA GAIL KURNS, Executrix of	:	CIVIL ACTION
the Estate of GEORGE M. CORSON,	:	
deceased, and FREIDA E. JUNG CORSON,	:	
widow in her own right	:	
	:	
vs.	:	No. 08-CV-2216
	:	
A.W. CHESTERTON, INC., et al.	:	

MEMORANDUM OF LAW

The case law is clear that This court has the power to reconsider and reverse grant of summary judgment to defendant by the state court judge herein as if it were that Judge and need not be concerned by the doctrine of coordinate jurisdiction. See Granny Goose Foods v. Brotherhood of Teamsters 415 US 423 (1974), In re Diet Drugs 282 F.3d 220 (3rd Cir 2002), Nasso v. Steve Seagal 263 F.Supp 2d 596 (USDCED NY 2003). A review of the pleadings herein shows that the state court judge failed to follow the Pennsylvania law on product identification summary judgment motions. The Court should reconsider, vacate the grant of the Orders and restore defendant to active states in this matter.

This assumes that when defendant removed the case that such removal brought along those defendants actually dismissed on summary judgment and parties herein. The docket shows removal occurred at 2:33 a.m. on May 18th. Thus, the grant of summary judgment to Westinghouse Airbrake/American Standard which occurred at 3:47 pm on May 18 was void ab initio as removal to this Court had already occurred and the state court thus had no jurisdiction over the matter.

Plaintiff attaches the answer to Westinghouse's motion as well as Westinghouse's motion and contends it should be denied.

Paul, Reich & Myers, P.C.

By: /s/Robert E. Paul

Robert E. Paul 21252
Paul, Reich & Myers, P.C.
1608 Walnut Street, #500
Philadelphia, PA 19103
(215) 735-9200

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA
CIVIL SECTION: TRIAL DIVISION

GLORIA GAIL KURNS, Executrix of	:	CIVIL ACTION
the Estate of GEORGE M. CORSON,	:	
deceased, and FREIDA E. JUNG CORSON,	:	
widow in her own right	:	
	:	
vs.	:	No. 08-CV-2216
	:	
A.W. CHESTERTON, INC., et al.	:	

ORDER

AND NOW, to wit, this Day of , 2008, the Motion to Reconsider Grant of Summary Judgment to American Standard is hereby GRANTED and the prior order granting summary judgment to Westinghouse Airbrake/American Standard is vacated.

BY THE COURT:

_____. J.

CERTIFICATE OF SERVICE

I, Robert E. Paul, hereby certify that on August ¹¹~~8~~, 2008, a true and correct copy of Plaintiff's Motion to Reconsider Grant of Summary Judgment to American Standard was served upon the following:



Robert E. Paul

HONORABLE JAMES GILES
United States District Court
Eastern District of Pennsylvania
Room 17614, United States Courthouse
601 Market Street
Philadelphia, PA 19106
(215) 597-0692

Daniel Ryan, Jr., Esquire
Marshall, Dennehey, Warner,
Coleman & Giggin
1845 Walnut Street, 13th Floor
Philadelphia, PA 19103
(215) 575-2740

REPORT : ZDRDOCT
USER ID: PJV

First Judicial District
CIVIL DOCKET REPORT
CASE ID 070601384

PAGE 1
RUN DATE 06/18/08
RUN TIME 03:06 PM

CASE NUMBER CASE CAPTION
070601384 CORSON ETAL VS AW CHESTERTON INC ETAL

FILING DATE COURT LOCATION JURY
13-JUN-2007 MT CH J

CASE TYPE: MASS TORT - ASBESTOS
STATUS: NOT OF REMOVAL TO US DIST CT

<u>Event</u>	<u>Schedule</u> <u>Date/Time</u>	<u>Year /Room /Loc</u>	<u>Judge Name</u>
MOTION ASSIGNED	02-JUN-08 15:00:00	CITY HALL COURTROOM 243 City Hall	TERESHKO, ALLAN L

<u>Seq #</u>	<u>Assoc</u>	<u>Expn Date</u>	<u>Type</u>	<u>ID</u>	<u>Party Name / Address & Phone No.</u>
1			APLF	A21252	PAUL, ROBERT E 1608 WLANUT ST SUITE 500 PHILADELPHIA PA 19103 (215)735-9200
2	1	29-JAN-08	PLF	@5798845	CORSON, GEORGE M 122 HILGER AVE LEWISTOWN MT 59457
3	1		PLF	@5798846	JUNG CORSON, FREIDA E 122 HILGER AVE LEWISTOWN MT 59457
4	106	25-APR-08	DFT	I127	AW CHESTERTON INC RT 93 MIDDLESEX INDUSTRIAL PARK STONEHAM MA 02180
5	82	25-APR-08	DFT	I13168	ACF INDUSTRIES 620 N. 2ND STREET ST. CHARLES MO 63301
6	110	13-MAY-08	DFT	I47	AIRCO WELDERS SUPPLY 4501 N. HOWARD ST. PHILADELPHIA PA 19140
7	76	28-APR-08	DFT	I13177	ALLEN-BRADLEY CO C/O CT CORP. SYSTEMS 44 EAST MIFFLIN STREET MADISON WI 53703
8			DFT	I229	AMCHEM PRODUCTS INC

REPORT : ZDRDOCT
USER ID: PJV

First Judicial District
CIVIL DOCKET REPORT
CASE ID 070601384

PAGE 44
RUN DATE 06/18/08
RUN TIME 03:06 PM

<u>Filing Date / Time</u>	<u>Docket Entry</u>	<u>Date Entered</u>
01-MAY-08 14:20:51	REPLY FILED RAILROAD FRICTION CORP, 32-08030832 REPLY TO PLAINTIFFS RESPONSE TO MOTION FOR SUMMARY JUDGMENT OF DEFENDANT RAILROAD, FRICTION PRODUCTS CORPORATION:	01-MAY-08
06-MAY-08 15:09:53	MOTION FOR REVERSE BIFURCATION AIRCO WELDERS SUPPLY, 0-08054009 RESPONSE DATE 5-19-2008:	07-MAY-08
07-MAY-08 15:04:36	MISC MOTION FILED AIRCO WELDERS SUPPLY, 10-08054010 RESPONSE DATE 5-19-2008: MOTION TO SEVER CLAIMS:	07-MAY-08
09-MAY-08 09:28:54	ORDER ENTERED/236 NOTICE GIVEN TERESHKO, ALLAN L 02-08030802 AND NOW, THIS 8 DAY OF MAY 2008, UPON CONSIDERATION OF THE MOTION FOR SUMMARY JUDGMENT OF DEFENDANT, SOO LINE RAILROAD, ET. AL., RESPONSES THERETO, IT IS HEREBY ORDERED AND DECREED THAT THE MOTION FOR SUMMARY JUDGMENT IS GRANTED IN FAVOR OF DEFENDANT SOO LINE RAILROAD, ET. AL., AND ALL CLAIMS AGAINST DEFENDANT, SOO LINE RAILROAD, ET. AL., BY ALL PARTIES, EITHER EXPRESSED OR IMPLIED, ARE HEREBY DISMISSED IN THEIR ENTIRETY WITH PREJUDICE.BY THE COURT: TERESHKO, J. 05-08-08	09-MAY-08
09-MAY-08 13:43:09	ORDER ENTERED/236 NOTICE GIVEN TERESHKO, ALLAN L 41 08030841 AND NOW, THIS 8TH DAY OF MAY 2008, UPON CONSIDERATION OF DEFENDANT FAIRBANKS MORSE ENGINE'S MOTION FOR SUMMARY JUDGMENT AND ANY RESPONSE THERETO, IT IS HEREBY ORDERED AND DECREED THAT SAID MOTION IS GRANTED PURSUANT TO AND ECKENROD AND DEFENDANT FAIRBANKS MORSE ENGINE IS HEREBY DISMISSED, WITH PREJUDICE... BY THE COURT: JUDGE ALLAN L. TERESHKO	09-MAY-08
09-MAY-08 13:47:25	ORDER ENTERED/236 NOTICE GIVEN TERESHKO, ALLAN L 35 08030735 AND NOW, THIS 8TH DAY OF MAY, 2008, UPON CONSIDERATION OF MOTION FOR SUMMARY JUDGMENT OF DEFENDANT, CROWN CORK & SEAL CO., INC., IT IS HEREBY ORDERED THAT: 1. DEFENDANT, CROWN CORK & SEAL COMPANY, INC.'S MOTION FOR SUMMARY JUDGMENT IS GRANTED; 2. JUDGMENT IS ENTERED IN FAVOR OF DEFENDANT, CROWN CORK & SEAL COMPOANY, INC. WITH PREJUDICE; 3. DEFENDANT, CROWN CORK & SEAL COMPANY, INC. IS HEREBY DISMISSED AS A PARTY TO THIS ACTION WITH PREJUDICE; AND, 4. ALL CLAIMS, CROSSCLAIMS AND CLAIMS FOR INTEREST, ATTORNEY'S FEES AND COSTS OF LITIGATION AGAINST DEFENDANT, CROWN CORK & SEAL	09-MAY-08

REPORT : ZDRDOCT
USER ID: PJV

First Judicial District
CIVIL DOCKET REPORT
CASE ID 070601384

PAGE 45
RUN DATE 06/18/08
RUN TIME 03:06 PM

<u>Filing Date / Time</u>	<u>Docket Entry</u>	<u>Date Entered</u>
	COMPANY, INC. ARE DISMISSED WITH PREJUDICE... BY THE COURT: JUDGE ALLAN L. TERESHKO	
09-MAY-08 14:45:28	MOTION IN LIMINE FILED	13-MAY-08
	AIRCO WELDERS SUPPLY, 38-08054038 MOTION IN LIMINE TO PRECLUDE PLAINTIFFS EXPERTS OR IN THE ALTERNATIVE, RULE 207.1 FRYE MOTION AND REQUEST FOR FRYE HEARING:	
12-MAY-08 14:59:09	ANSWER (MOTION/PETITION) FILED	12-MAY-08
	87-08044587 PLAINTIFFS ANSWER TO DEFENDANTS MOTION TO DISMISS: JUNG CORSON, FREIDA E	
12-MAY-08 15:16:22	MOTION IN LIMINE FILED	13-MAY-08
	AIRCO WELDERS SUPPLY, 40-08054040 DEFENDANT AIRCO'S MOTION IN LIMINE TO PRECLUDE PLAINTIFFS CAUSATION EXPERT, JAMES GIRARD FROM TESTIFYING AT TRIAL OR IN THE ALTERNATIVE RULE. 207.1 FRYE MOTION AND REQUEST FOR FRYE HEARING:	
13-MAY-08 02:23:00	NOT OF REMOVAL TO US DIST CT	13-MAY-08
	NOTICE OF REMOVAL TO THE U.S. (EASTERN) DISTRICT COURT UNDER 03-CV-2216 FILED. LOCKETT, MARK A	
13-MAY-08 13:10:28	ORDER ENTERED/236 NOTICE GIVEN	13-MAY-08
	32-08030832 AND NOW, TO WIT, THIS 13 DAY OF MAY 2008, THE MOTION FOR SUMMARY JUDGMENT OF RAILROAD FRICTION IS HEREBY DENIED.BY THE COURT: TERESHKO, J. 05-13-08 TERESHKO, ALLAN L	
13-MAY-08 15:49:31	ORDER ENTERED/236 NOTICE GIVEN	13-MAY-08
	69 08030869 AND NOW, THIS 13TH DAY OF MAY, 2008, UPON CONSIDERATION OF DEFENDANT, WESTINGHOUSE AIR BRAK'S MOTION FOR SUMMARY JUDGMENT IN THE ABOVE-CAPTIONED CASE, IT IS HEREBY ORDERED AND DECREED THAT SAID MOTION IS HEREBY GRANTED AND ALL CLAIMS AGAINST WESTINGHOUSE AIR BRAKE ARE HEREBY DISMISSED WITH PREJUDICE..BY THE COURT: JUDGE ALLAN L. TERESHKO TERESHKO, ALLAN L	
13-MAY-08 15:58:28	ORDER ENTERED/236 NOTICE GIVEN	13-MAY-08
	45 08030845 AND NOW, THIS 13TH DAY OF MAY, 2008, UPON CONSIDERATION OF THE MOTION OF DEFENDANT, AIRCO WELDERS SUPPLY, INC. A/K/A THE BOC GROUP, INC., FOR SUMMARY JUDGMENT IN THE ABOVE-CAPTIONED CASE, IT IS HEREBY ORDERED AND DECREED THAT SAID MOTION IS HEREBY GRANTED AND ALL CLAIMS AGAINST AIRCO WELDERS SUPPLY, INC. A/K/A THE BOC GROUP, INC. ARE HEREBY DISMISSED, TERESHKO, ALLAN L	

IN THE SUPERIOR COURT OF PENNSYLVANIA
EASTERN DISTRICT

DOCKET NO.: 1731 EDA 2008

MARGARET HOWARD AND ROBERT HOWARD, EXECUTORS OF
THE ESTATE OF JOHN C. RAVERT, DECEASED,
Appellants,

v.

MONSEY PRODUCTS COMPANY, et al.,
Appellees.

APPELLEE MONSEY PRODUCTS COMPANY'S
MOTION TO QUASH THE APPEAL

RAWLE & HENDERSON LLP
Peter J. Neeson, Esquire
Carl D. Buchholz, III, Esquire
Linda Dobbins, Esquire
Identification Nos. 27601/14085/78112
The Widener Building
One South Penn Square
Philadelphia, PA 19107
(215) 575-4200
(215) 563-2583 (fax)
Attorneys for Appellee Monsey
Products Company

Appellee Monsey Products Company ("Monsey"), by and through its attorneys, Rawle & Henderson LLP, hereby moves this Honorable Court for an Order quashing Appellants' appeal as follows:

1. John C. Ravert, deceased, commenced this action by filing a Complaint in the Philadelphia County Court of Common Pleas on June 4, 2007, said case docketed at June Term, 2007, Civil Action No. 202, against numerous defendants, including Monsey, alleging that he was exposed to asbestos while employed in various occupations and while performing limited roofing work and was subsequently diagnosed with mesothelioma. A copy of the relevant portions of the trial court docket entries is attached hereto as Exhibit "A." Ravert passed away on September 18, 2007, and the executors of his estate, Margaret and Robert Howard, were substituted as the plaintiffs in the case.

2. Monsey filed a Motion for Summary Judgment on the grounds that the plaintiffs offered no testimony and/or other evidence that the use of Monsey products emitted respirable asbestos fibers and, therefore, could not meet the asbestos exposure requirements of proximity, frequency and regularity established in Eckenrod v. GAF Corp., 375 Pa. Super. 187, 544 A.2d 50 (1988), and more recently affirmed in Gregg v. V-J Auto Parts, 943 A.2d 216 (Pa. 2007).

3. On May 14, 2008, the lower court granted Monsey's summary judgment motion, as well as the summary judgment motions of several other defendants, and dismissed all claims against them; the case was proceeding to trial against the two remaining defendants, Goodyear Tire & Rubber Co. ("Goodyear"), and Weil-McLain. See Exhibit "A."

4. However, on May 20, 2008, Goodyear and Weil-McLain removed the case to the United States District Court for the Eastern District of Pennsylvania pursuant 28 U.S.C. § 1441(b) on the ground that the federal court had diversity jurisdiction (28 U.S.C. § 1332) once

the remaining Pennsylvania parties were dismissed from the case; the case is now pending federal court. See Exhibit "A."

5. On May 30, 2008, notwithstanding the removal to federal court, plaintiffs filed a Notice of Appeal as to the May 14, 2008 Orders dismissing Monsey, A.W. Chesteron Co., Ace Hardware Corp., Pecora Corp., and Union Carbide Corp. See Exhibit "A."

6. However, the jurisdiction of the Pennsylvania Superior Court has not properly been invoked by the plaintiffs in this matter since the May 14, 2008 Orders are not "final" orders.

7. "[A]n appeal may be taken as of right from any final order of an administrative agency or lower court." Pa.R.A.P. 341(a).

8. "A final order is any order that: (1) disposes of all claims and of all parties; or (2) is expressly defined as a final order by statute; or (3) is entered as a final order pursuant to subdivision (c) of this rule." Pa.R.A.P. 341(b); see also In re Miscin, 885 A.2d 558, 561 (Pa.Super.2005)

9. Since the summary judgment motions of Goodyear and Weil-McLain were denied and they currently remain in the case, the May 14, 2008 Orders are not final orders from which plaintiffs may appeal as a matter of right. See Spuglio v. Cugini, 818 A.2d 1286 (Pa.Super. 2003) (orders granting preliminary objections disposing of some, but not all parties or claims, were interlocutory and unappealable);

10. Additionally, plaintiffs never sought a determination of finality from the lower court permitting an appeal as to less than all parties pursuant to Pa.R.A.P. 341(c). See Smitley v. Holiday Rambler Corp., 707 A.2d 520, 524 (Pa. Super. 1998).

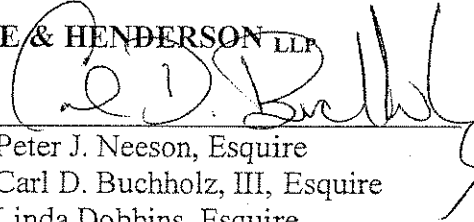
11. The fact that the case was removed to federal court does not render the May 14, 2008 Orders "final"; rather, upon disposition of the claims against Goodyear and Weil-McLain, the federal court can remand the case to state court so that the plaintiffs can then appeal the May 14, 2008 Orders.

12. Permitting plaintiffs to appeal the May 14, 2008 Orders at this time would encourage the piecemeal litigation that the Pennsylvania Rules of Appellate Procedure are meant to avoid.

WHEREFORE, Monsey respectfully requests this Honorable Court to enter the attached Order quashing this appeal.

RAWLE & HENDERSON LLP

By:



Peter J. Neeson, Esquire
Carl D. Buchholz, III, Esquire
Linda Dobbins, Esquire
The Widener Building
One South Penn Square
Philadelphia, PA 19107
(215) 575-4200
Attorneys for Appellee Monsey Products
Company